

Abigail V. O'Brient (SBN 265704)
avobrient@mintz.com

Andrew B. Levin (SBN 290209)
ablevin@mintz.com

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.

3580 Carmel Mountain Road, Suite 300

San Diego, CA 92130

Tel: 858-314-1500

Fax: 858-314-1501

Attorneys for
Richard M Kipperman, Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT

Southern District of California

In re

LIVE OAK HOLDING, LLC,

Debtor.

Case No. 13-11672-LT11

Chapter 11

**MOTION FOR ORDER (1) APPROVING
BIDDING AND SALE PROCEDURES; (2)
APPROVING SALE OF WATER
COMPANY AND RELATED ASSETS
FREE AND CLEAR OF LIENS, CLAIMS,
INTERESTS AND ENCUMBRANCES
PURSUANT TO 11 U.S.C. § 363(f); AND (3)
GRANTING RELATED RELIEF**

Date: February 14, 2019

Time: 10:00 a.m.

Dept.: 3

Judge: Laura S. Taylor

Pursuant to 11 U.S.C. § 363 and Federal Rule of Bankruptcy Procedure 6004, Richard M Kipperman, the chapter 11 trustee (the "Trustee") of Live Oak Holding, LLC (the "Debtor"), hereby moves (the "Motion") the Court for the entry of an order (1) approving bidding and sale procedures (the "Bidding Procedures") (as set forth in the memorandum of points and authorities filed concurrently herewith (the "Memorandum")) in connection with the sale of (a) Live Oak Springs Water Company, a water utility (the "Water Company"), (b) approximately 27 acres of real property located at 37820 Old Highway 80, Boulevard, California with APNs 609-050-03-00, 609-050-06-00, 609-086-03-00, 609-071-01-00, and 609-090-07-00 occupied by the Water Company and the improvements thereon (including groundwater wells and three 20,000 gallon water storage tanks)

(the “Real Property”); and (c) all assets owned by the Water Company and/or owned by the Debtor and used by the Water Company, including, but not limited to, machinery, equipment, hardware, materials, fixtures, trade fixtures, storage units, vehicles, tools, and books and records (together with the Water Company and the Real Property, the “Assets”); (2) approving the sale of the Assets free and clear of all liens, claims, interests and encumbrances pursuant to 11 U.S.C. § 363(f); and (3) granting related relief.

This Motion is based upon the notice of motion, the memorandum of points and authorities and the Declaration of Richard M. Kipperman (“Kipperman Declaration”) filed concurrently herewith, all pleadings, papers and records currently on file with the Court or as may be filed in advance of the hearing on the Motion, and such other evidence, oral or documentary, as may be presented to the Court at or before the time of the hearing on the Motion.

WHEREFORE, the Trustee prays that this Court enter an Order:

1. Approving the Bidding Procedures, with appropriate findings;
2. Authorizing, with appropriate findings, the sale of the Assets to the bidder that submits the highest or otherwise best bid for the Assets (“Successful Bidder”) at the auction to be held in accordance with the Sale Procedures, pursuant to the terms of an Asset Purchase Agreement in substantially the form attached as **Exhibit 1** (the “APA”) to the Kipperman Declaration (or, in the event no competing bids are received, to DD Axiom (as defined in the Memorandum) pursuant to the terms of the Stalking Horse Bid (as defined in the Memorandum)), with such sale to be free and clear of any interests, liens, claims and encumbrances (hereinafter collectively referred to as “Liens and Encumbrances”) pursuant to section 363(f) of the Bankruptcy Code, with the Liens and Encumbrances to attach to the net sale proceeds in the preexisting order of priority;
3. Making appropriate findings regarding (a) adequacy of notice of the Motion to creditors and parties in interest; (b) the good faith of the Successful Bidder and any Back-Up Bidder (as defined in the Memorandum) in connection with the negotiation, execution, delivery and consummation of the APA and the purchase and sale of the Assets; and (c) the arms-length nature of such negotiations and transactions, together with such other findings as are necessary to ensure that the Successful Bidder and, if the Successful Bidder fails to close, the Back-Up Bidder, is entitled to

1 the protection afforded by 11 U.S.C. § 363(m);

2 4. Waiving the fourteen (14) day stay provided in Federal Rule of Bankruptcy Procedure
3 6004(h); and

4 5. Granting such other and further relief as the Court deems just and proper.

5
6 Dated: January 17, 2019

/s/ Abigail V. O'Brient

Abigail V. O'Brient

Andrew B. Levin

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.

8 Attorneys for

9 Richard M Kipperman, Chapter 11 Trustee

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.